

## **REMARKS**

### **Interview Request**

In an effort to expedite prosecution, the undersigned requests a personal interview and asks that the Examiner not examine the claims until an interview has been conducted.

### **Office Action**

Claims 60 to 67, 70, 72, 73, 75 to 83, 86, and 88 to 111 were pending on the November 12, 2009, mailing date of the non-final Office Action. Claims 60 to 67, 70, 72, 73, 75 to 83, 86, and 88 to 111 have been cancelled, and new claims 112 to 141 have been added. Claims 112, 119, 122, 129, 132 and 139 are the independent claims. Reconsideration and further examination are requested.

### **Claim Rejections**

Claims 60, 62, 91 and 111 were rejected under 35 U.S.C. § 101; claims 60 to 67, 72, 73, 75 to 83, 91, and 111 were rejected under 35 U.S.C. § 102(e) over U.S. Pat. App. Pub. No. 2008/0176510 ("Yuhara"); claims 88, 89, and 107 to 109 were rejected under 35 U.S.C. § 103(a) over Yuhara in view of U.S. Pat. App. Pub. No. 2004/0107350 ("Wasilewski"); and claims 70, 86, 90 and 110 were rejected under 35 U.S.C. § 103(a) over Yuhara in view of Official Notice. Claims 60 to 67, 70, 72, 73, 75 to 83, 86, and 88 to 111 have been cancelled, without conceding the correctness of the rejections. Withdrawal of the §§ 101, 102, and 103 rejections is requested.

New independent claims have been added to express in more clear and expansive form the features that distinguish the claimed inventions over the applied references. For instance, the independent claims now recite the feature of: "generating, by a set top box, a trigger to check whether the set top box is to invoke update code that is continuously streamed to the set top box by a server on a predetermined channel," or "continuously streaming, by the server, the update code, including the m-bit update flag, to the set top boxes on a predetermined channel." The applied references do not disclose, teach or suggest at least these new features.

Official Notice

The Applicant respectfully traverses the Examiner's official notice that certain features, including at least the features of claims 70, 86, 90 and 110 were allegedly well-known in the art. Under MPEP § 2144.03(A), official notice may only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art, are capable of instant and unquestionable demonstration as being well-known. *See* MPEP § 2144.03(A). More to the point, an Examiner is prohibited from taking official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. *See id.*

In the instant case, the Applicants respectfully assert that the features of claims 70, 86, 90 and 110 are not capable of instant and unquestionable demonstration. Indeed, although the Office Action has itself made numerous comprehensive references of record in the Forms PTO-892 and PTO-1449 which accompany the Office Action, it is noteworthy that none of these references are even asserted by the Examiner to describe these features, features which are alleged to be instantly and unquestionably demonstrated or "well known" by the art. Having failed to locate this feature after either conducting an exhaustive art search or reviewing the Applicants disclosed references, the Applicants respectfully assert that these features are ineligible for office notice, and further request that the Examiner provide documentary evidence if the rejection is to be maintained. *See* MPEP § 2144.03(C).

Conclusion

The additional claims in the application not separately addressed are each dependent on the independent claims, and are allowable over the applied references for at least the above reasons. Because each claim is deemed to define additional aspects of the disclosure, however, the individual consideration of each claim on its own merits is respectfully requested.

The absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply.

No other matters being raised, and the entire application is fully in condition for allowance, and such action is courteously solicited.

Fees in the amount of \$220 for the excess independent claim are being paid by way of the Electronic Filing System (EFS). Please apply any fees not otherwise paid or apply any credits to Deposit Account No. 06-1050.

Respectfully submitted,

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